

REMARKS

In an Office Action dated January 11, 2004, the Examiner has rejected claims 25-40 in the pending application. Reconsideration of this application and allowance of the claims is respectfully requested in view of the following remarks.

Claims 28, 37, and 40 were objected to under 37 CFR 1.75(c), as being of improper dependent form, for failing to further limit the subject matter of a previous claim. According to the Examiner, claim 28 improperly depends on claim 38, claim 37 does not identify the claim it depends on, and claim 40 recites improper Markush Language, "selected from the group comprising" should be "selected from the group consisting of". Applicant has amended claims 28 and 38 to correct proper dependency of the claims, claim 28, as amended, being dependent on claim 27, and claim 38, as amended, is now dependent on claim 28. Both claims 28 and 38, as amended, further limit the scope of the subject matter of a previous claim. Applicant amended claim 37 to include the dependency "as claimed in claim 25" in the claim. This amendment corrects a typographical error which occurred in applicant's last amendment. Applicant submits that claim 40, as amended, recites the proper markush language of "selected from the group consisting of". For the above reasons applicant respectfully submits that the objections to claims 28, 37, and 40 are now moot. Withdrawal of the rejection is respectfully requested.

Claims 25-40 were provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 31-36, and 39 of copending application No. 10/922,828. The Examiner asserts that although the conflicting claims are not identical, they are not patentably distinct from each other because while the claims of the

10/922,828 application do not recite the weight range of domperidone and particular excipients in the compositions these differences do not constitute a patentable distinction.

Applicants submit herewith a terminal disclaimer. Applicants have disclaimed the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term of any patent granted on U.S. Patent Application 10/922,828, as set forth in the terminal disclaimer. Accordingly, Applicants submit that claims 25-40 are not unpatentable over claims 31-36, and 39 of U.S. Patent Application No. 10/922,828 under the judicially created doctrine of obviousness-type double patenting.

Withdrawal of the rejection is respectfully requested.

Applicants submit that the present application is now in condition for allowance. Reconsideration and favorable action are earnestly requested.

Also, if any additional payment is required, please charge the cost thereof to deposit account no. 02-2135.

RESPECTFULLY SUBMITTED,					
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